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Opinion Committee

Ms. Susan Garrison  
Chief, Opinion Section  
P. O. Box 12548  
Austin, Texas 78711-2548

Dear Ms. Garrison:

I would like to submit the following question to your division:

Is a juvenile who has been adjudicated as a child engaged in delinquent conduct, and that adjudication being based on a violation of the penal law of the grade of felony, entitled to deny having ever been so adjudicated in applications for employment, institutions for higher education, etc?

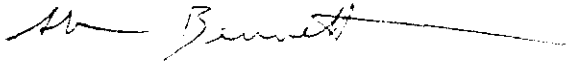
Pursuant to Section 51.16(h) of the Texas Family Code, a juvenile whose records have been sealed under this Act is not required to disclose that he has ever been the subject of a proceeding under this Act. Section 51.16(i) the juvenile court's files may be destroyed if certain conditions are met. Section 51.16(j) however, prevents the sealing or destroying of files if the delinquency is based upon a violation of the penal law of the grade of felony.

The basic fact situation causing this dilemma is this: A juvenile commits a felony, and the defense attorney doesn't want a felony adjudication on his client's "record". My response is that the records are confidential and no one will ever know anyway unless it's later admitted at the punishment phase of his client's trial as an adult, see Section 51.13(a) and (b). The defense attorney's concern is his client later applying to law school, medical school, etc... My response has been "so what?" Thinking that his client would never have to admit anything on any such application, as per Section 51.16(h). The defense attorney's response is that the "license to lie" only comes with the sealing of the records, which can't occur in a felony adjudication. Also of importance is Section 52.01(b), which states in essence that an arrest isn't really an "arrest," thus someone could later say, honestly, that he's never been convicted of a crime [(51.13(a)) nor has he ever been arrested [52.01(b)]].

I hope this clears up some of the confusion concerning my question; if you have any thoughts, concerns, or questions regarding my inquiry please feel free to contact me at the district attorney's office.

Thank you very much for your time and consideration in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alan Bennett", followed by a long horizontal line extending to the right.

Alan Bennett  
Assistant District Attorney